

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 37647-4-II

Respondent,

v.

CHRISTOPHER S. LAGERVALL aka
ABDUL R. ALI,

UNPUBLISHED OPINION

Appellant.

Penoyar, A.C.J. — Christopher Lagervall¹ appeals a trial court order denying his motion to withdraw his plea of guilty to second degree assault, two counts of custodial assault, and criminal harassment. He contends that there was an insufficient factual basis for the custodial assault crimes, rendering the plea involuntary. We affirm.²

FACTS

On November 30, 2006, when Thurston County Jail staff told Lagervall that they would not take him off administrative segregation, he threatened to become violent. Shortly thereafter, when Officer Gordon handed him his lunch, he punched Gordon, and then jammed his thumb into Gordon’s eye. Other officers responded and restrained Lagervall. While restrained, Lagervall spat in Officer Muldrew’s face and threatened to “take [] out” Officer Zimmaro the

¹ Lagervall has taken the name Abdul R. Ali. However, as he was charged under the name Christopher Lagervall, and that is the name that appears in the record associated with this appeal, we will also refer to him by that name.

² A commissioner of this court initially considered this matter pursuant to RAP 18.14 and referred it to a panel of judges. Lagervall did not timely appeal his judgment and sentence. His motion to vacate addressed name change, competency, due process, and factual basis issues. After an *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493, brief was filed, we directed further briefing on the factual basis issue only.

first chance he got. Clerk's Papers (CP) at 3.

On December 5, 2006, the State charged Lagervall with one count of attempted first degree assault, two counts of custodial assault, and one count of harassment. Thereafter, Lagervall offered to plead guilty to second degree assault, two custodial assaults, and harassment, in exchange for the dismissal of charges pending under two other cause numbers. The State agreed, and Lagervall entered his plea at the August 15, 2007 hearing.

At that hearing, Lagervall assured the court that he had gone over his statement with counsel, and counsel had explained it to him; he understood the statement, and he understood the charges. The court accepted his plea and sentenced him to the high end of the standard ranges for each crime. He did not appeal. However, approximately five months later, on January 14, 2008, he moved to withdraw his plea, citing violations of speedy trial. The court denied his motion, and he now appeals.

ANALYSIS

Lagervall challenges only the convictions of custodial assault, arguing that the evidence was insufficient to prove that (1) Gordon and Muldrew were performing their official duties at the time of the assault, and (2) he committed the assaults intentionally.

A person is guilty of custodial assault if that person assaults a full or part-time staff member, educational personnel, volunteer, a personal service provider, or any vendor or agent at any corrections institution or local detention facility performing official duties at the time of the assault. RCW 9A.36.100(1)(b).

Constitutional due process requires that a defendant's guilty plea must be knowing, intelligent, and voluntary. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008) (citing

State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006)). In order for a plea to be voluntary, the defendant must know the offense elements and understand how his conduct satisfies those elements. *State v. R.L.D.*, 132 Wn. App. 699, 705, 133 P.3d 505 (2006); *see also In re Pers. Restraint of Keene*, 95 Wn.2d 203, 209, 622 P.2d 360 (1980). An inadequate factual basis may affect this understanding. *In re Pers. Restraint of Clements*, 125 Wn. App. 634, 645, 106 P.3d 244 (2005). A factual basis sufficient to support a guilty plea exists if there is sufficient evidence for a jury to conclude that the defendant is guilty. *State v. Amos*, 147 Wn. App. 217, 228, 195 P.3d 564 (2008). The factual basis need not be established by the defendant's admissions; any reliable source may be used, as long as the material the trial court relied on is made part of the record. *State v. Osborne*, 102 Wn.2d 87, 95, 684 P.2d 683 (1984).

Lagervall's plea form contained the following admissions:

In Thurston Co., WA, on 11/30/06 I intentionally assaulted another person & recklessly inflicted substantial bodily harm; I assaulted 2 staff members of an adult detention facility; and without lawful authority, I knowingly threatened to cause bodily harm to another person & my words or conduct placed that person in reasonable fear that my threat would be carried out.

CP at 33. While it may be true that those statements, alone, do not establish all of the crime elements, there was other evidence available to the court in the prosecutor's declaration in support of probable cause. That document indicates that when Gordon was attacked, he was handing Lagervall his lunch. Muldrew was one of the officers who responded to the attack and helped to restrain Lagervall. Clearly those officers were performing official duties.

The prosecutor's declaration also contains evidence of intent. First, it indicates that Lagervall threatened to do violence to staff a short time before he committed the acts at issue. Second it reports statements that confirm that intent, made after the incident. According to the

declaration, Lagervall said that he wanted to attack corrections officers to “get back at the system” and that as a newly converted Muslim, it was his duty to attack the officers. CP at 3. He also said that he had “intended to tear [Gordon’s] eye completely out” and thought about using a pencil to do it. CP at 3. That was more than enough to establish intent.³

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, A.C.J.

I concur:

Hunt, J.

I concur in the result only:

Quinn-Brintnall, J.

³ It is also worth noting that Lagervall admitted in his plea statement that he intentionally assaulted one officer. That was Gordon, who was also the victim in one of the custodial assault charges. The acts of punching the officer in the face and jamming his finger in the officer’s eye were part of a single criminal incident, giving rise to a reasonable inference that they were committed with the same culpable mental state.